

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Power Agency)	
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Petition for Approval of the 2016 IPA)	Docket 15-0541
Procurement Plan Pursuant to Section)	
16-111.5(d)(4) of the Public Utilities Act)	
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MIDAMERICAN ENERGY COMPANY’S REPLY BRIEF ON EXCEPTIONS

NOW COMES, MidAmerican Energy Company (“MidAmerican”) and pursuant to the Administrative Law Judges’ (“ALJs”) October 6, 2015, Notice of Schedule, hereby respectfully submits its Reply Brief on Exceptions in support of the ALJs’ Proposed Order.

- I. Response to Other Parties’ Exceptions related to the amount of Renewable Energy Resources Procured for MidAmerican**
 - A. Whether MidAmerican’s Renewable Energy Resources Procurement Target Should Be Calculated for Only the Portion of its Load for which It Has Requested Procurement**

As MidAmerican stated in its Letter in Lieu of Exceptions, MidAmerican appreciates the ALJs’ thoughtful and comprehensive Proposed Order. In presenting its 2016 Procurement Plan, the Illinois Power Agency (“IPA”) recognized the issue related to MidAmerican’s renewable resource target is one of statutory interpretation. IPA BOE at 20; Proposed Order at 124. The Proposed Order logically concludes that the statutes should be interpreted so that MidAmerican’s renewable resource target should only relate to the portion of the “total supply” procured for MidAmerican’s jurisdictional eligible retail customers for the 2016 Procurement Plan pursuant to Section 16-111.5 of the Public Utilities Act (“PUA”) and Section 1-75(c) of the Illinois Power Agency Act (“IPA Act”). Proposed Order at 125-126.

The Illinois Commerce Commission Staff (“Staff”) and the IPA urge the Illinois Commerce Commission (“Commission”) to reject the Proposed Order’s conclusion relating to this issue. Staff reiterates the arguments already rejected in the Proposed Order and also addressed in MidAmerican’s October 5, 2015, Reply Comments and Objections. Staff BOE at 10-13; *See also* Staff Response at 18-23. The IPA refers to its previous arguments, and also points out that the “the statutory scheme as a whole would have expressly made an exception were an exception intended, an exception that Staff points out the drafters full well knew how to make.” IPA BOE at 21-22.

The Proposed Order’s conclusion is consistent with Illinois law and the statutory intent of Section 16-111.5 of the PUA and Section 1-75(c) of the IPA Act. Staff and the IPA continue to argue Section 16-111.5(a) of the PUA and Section 1-75(c) of the IPA Act must be read as a whole, yet both Staff and the IPA limit their analysis to the definition of “eligible retail customers” at the expense of the language in the entire subsection 16-111.5(a) and subsection (b) of the PUA. Staff and the IPA argue the legislature did not change the definition of “eligible retail customers” when the statutes were amended to include MidAmerican’s participation. Staff BOE at 13, IPA BOE at 21 citing Staff Response at 18-23. A reading of the entire subsection 16-111.5(a) along with subsection (b) suggests otherwise.

If the Commission adopts the statutory construction suggested by Staff and the IPA, the legislative intent will effectively be rendered meaningless since Section 16-111.5(a) explicitly states MidAmerican “may elect to procure power for all or a portion of its eligible Illinois retail customers in accordance with the applicable provisions set forth in this Section and Section 1-75 of the Illinois Power Agency Act.” 220 ILCS 5/16-111.5(a), emphasis added. Furthermore,

Section 16-111.5(b) also states “[s]mall multi-jurisdictional utilities may request a procurement plan for a portion of or all of its Illinois load.” 220 ILCS 5/16-111.5(b), emphasis added.

The Illinois Supreme Court has found that in order to ascertain the legislature's intent, courts must begin by examining the language of the statute, reading the statute as a whole, and construing it so that no word or phrase is rendered meaningless or superfluous. *Kraft, Inc. v. Edgar*, 138 Ill.2d 178, 189, 149 Ill.Dec. 286, 561 N.E.2d 656, 661 (1990). The Proposed Order correctly concluded that subsections 16-111.5(a) and (b) of the PUA must be read together to ascertain the exception to the “eligible retail customer” carved out for small multi-jurisdictional utilities. To interpret otherwise, renders the legislative intent for MidAmerican to elect to procure power for only a portion of its eligible Illinois retail customers meaningless. Therefore, the Proposed Order properly rejected Staff’s and IPA’s arguments.

Staff and the IPA also take issue with the Proposed Order’s conclusion that it is “unreasonable the legislature would create unnecessary hardship for MidAmerican to participate in the 2016 Procurement Plan.” Proposed Order at 125; Staff BOE at 13; IPA BOE at 21. Staff claims the record does not support such a conclusion. *Id.*

MidAmerican respectfully disagrees. MidAmerican’s Reply Comments and Objection addressed the reasonableness of limiting the renewable resource procurement to the incremental portion of its load to be served with energy obtained through the 2016 Procurement Plan. MidAmerican Reply Comments at 9. MidAmerican pointed out that applying the renewable target percentage to only the incremental portion of its load is consistent with statute and will avoid an unneeded excess procurement. *Id.* The Proposed Order properly concluded a hardship would be created if MidAmerican’s renewable target was based on its “total” load. *See also*

Section B below. The Proposed Order points out the language provided in Section 16-111.5(a) and (b) of the PUA allows the IPA to procure only a “portion” of MidAmerican eligible retail load and not MidAmerican’s “total” retail load. Proposed Order at 125. The Proposed Order logically recognizes that basing a renewable target on MidAmerican’s “total” retail load is not required by the statute and that basing a renewable target on the “total” retail load would result in procurement of more renewable credits than are required by law. This would create additional costs which would be passed along to MidAmerican’s customers, as the IPA recognizes. IPA BOE at 21, conceding fees will be collected from MidAmerican’s customers.

The IPA also argues there is no hardship because MidAmerican would simply be placed on a level playing field with ComEd and Ameren, each of which are required to meet renewable energy resource procurement targets for their entire eligible retail customer load. IPA BOE at 21. In light of the explicit statutory language allowing MidAmerican to procure power for a portion of its eligible retail load, comparing MidAmerican to ComEd and Ameren is inappropriate since ComEd and Ameren have different statutory requirements. 220 ILCS 5/16-111.5(a) and (b).

As the Proposed Order points out, ComEd and Ameren are electric utilities that “on December 31, 2005 served at least 100,000 customers in Illinois.” Proposed Order at 125. The requirement for a utility of this size is that it “shall procure power and energy for its eligible retail customers in accordance with the applicable provisions set forth in Section 1-75 of the Illinois Power Agency Act and this Section.” On the other hand, subsections 16-111.5(a) and (b) carve out an exception for small multijurisdictional utilities such as MidAmerican that is not given to ComEd or Ameren. MidAmerican is a “small multi-jurisdictional electric utility that on

December 31, 2005 served less than 100,000 customers in Illinois and may elect to procure power and energy for all or a portion of its eligible Illinois retail customers in accordance with the applicable provisions set forth in this Section and Section 1-75 of the Illinois Power Agency Act.” Therefore, MidAmerican is not required to procure energy and capacity for its entire eligible retail load through the IPA. 220 ILCS 5/16-111.5(a) and (b). The exception for small multijurisdictional utilities results in different treatment for MidAmerican until such time as MidAmerican requests that the IPA procure energy and capacity for its entire eligible retail load.

The Proposed Order logically concludes “it is likely unreasonable to determine that the intent of legislature would be to create unnecessary hardship for MidAmerican to participate in the 2016 Procurement Plan.” Proposed Order at 125. As noted above, procuring additional renewable credits will pose an unnecessary financial hardship on MidAmerican’s customers because the renewable credits are not based on the amount of energy and capacity MidAmerican is seeking to procure from the IPA. The IPA concedes the collection of fees will be passed to MidAmerican’s eligible retail customers. IPA BOE at 21. Despite the IPA argument that Section 1-75(c)(2)(E) of IPA Act places a rate cap on the amount of renewable targets procured, the 2.015% rate cap is set as a protective threshold to limit rate shock, and it is not the proper basis to set a renewable target.

The Proposed Order reached logical and sound conclusions when interpreting Sections 16-111.5(a) and (b) of the PUA in conjunction with Section 1-75(c) of the IPA Act. For the reasons set forth above, the Commission should adopt the Proposed Order’s finding and conclusion related to MidAmerican’s renewable target.

B. Staff Clarification for Procuring MidAmerican’s “Portion of Total Supply”

Staff requests clarification of what “that portion” would be in a numerical value for MidAmerican, or how “that portion” should be calculated, and also how this decision would affect the budget available for MidAmerican’s renewable energy resource purchases. Staff provides a list of questions for the Proposed Order to address, but for the reasons listed below, MidAmerican believes these questions were already answered in its Comments to the IPA and additional clarification is not necessary should the Commission adopt the Proposed Order’s recommendation.

MidAmerican respectfully points out that Staff questions are addressed in MidAmerican’s comments filed with the IPA on September 14, 2015. MidAmerican’s comments, a red-line of the Draft 2016 Procurement Plan, and the Renewable Portfolio Standard worksheet are posted on the IPA website.¹ MidAmerican’s comments to the IPA included a red-line version of pages 125-126 and 128 of the Draft 2016 Procurement Plan that included updates to the renewable resource target and the renewable resource budget funds. MidAmerican’s Renewable Portfolio Standard worksheet was also provided to demonstrate how “that portion” of MidAmerican’s renewable target and related budget were calculated. Specifically, MidAmerican proposed the following changes to pages 125-126 of the Draft Plan to reflect requirements based only on MidAmerican’s requested procurement through the IPA:

¹ The IPA opted not to include these proposed changes to the 2016 Procurement Plan filed with the Commission on September 29, 2015.

Table 8-3: MidAmerican Existing RPS Contracts vs. RPS Requirements

Delivery Year		Total Renewables	Wind ²	Photo-voltaics ³	Distributed Generation ⁴
2016-2017	Target (MWh)	<u>220,418</u> <u>38,610</u>	<u>165,313</u> <u>28,957</u>	<u>13,225</u> <u>2,317</u>	<u>2,204</u> <u>386</u>
	Purchased MWh	0	0	0	0
	Remaining Target (MWh)	<u>220,418</u> <u>38,610</u>	<u>165,313</u> <u>28,957</u>	<u>13,225</u> <u>2,317</u>	<u>2,204</u> <u>386</u>
2017-2018	Target (MWh)	<u>258,864</u> <u>43,646</u>	<u>194,148</u> <u>32,734</u>	<u>15,532</u> <u>2,619</u>	<u>2,589</u> <u>436</u>
	Purchased MWh	0	0	0	0
	Remaining Target (MWh)	<u>258,864</u> <u>43,646</u>	<u>194,148</u> <u>32,734</u>	<u>15,532</u> <u>2,619</u>	<u>2,589</u> <u>436</u>
2018-2019	Target (MWh)	<u>289,334</u> <u>48,682</u>	<u>217,000</u> <u>36,511</u>	<u>17,360</u> <u>2,921</u>	<u>2,893</u> <u>487</u>
	Purchased MWh	0	0	0	0
	Remaining Target (MWh)	<u>289,334</u> <u>48,682</u>	<u>217,000</u> <u>36,511</u>	<u>17,360</u> <u>2,921</u>	<u>2,893</u> <u>487</u>
2019-2020	Target (MWh)	<u>320,477</u> <u>58,558</u>	<u>240,358</u> <u>43,919</u>	<u>19,229</u> <u>3,514</u>	<u>3,205</u> <u>586</u>
	Purchased MWh	0	0	0	0
	Remaining Target (MWh)	<u>320,477</u> <u>58,558</u>	<u>240,358</u> <u>43,919</u>	<u>19,229</u> <u>3,514</u>	<u>3,205</u> <u>586</u>
2020-2021	Target (MWh)	<u>351,859</u> <u>70,230</u>	<u>263,894</u> <u>52,672</u>	<u>21,112</u> <u>4,214</u>	<u>3,519</u> <u>702</u>
	Purchased MWh	0	0	0	0
	Remaining Target (MWh)	<u>351,859</u> <u>70,230</u>	<u>263,894</u> <u>52,672</u>	<u>21,112</u> <u>4,214</u>	<u>3,519</u> <u>702</u>

The revised MWh values in Table 8-3 above are based on underlying calculations that exclude projected sales of excess supply to the Midwest Independent System Operator, as Staff proposes. Staff BOE at 17. The calculations MidAmerican provided to the IPA in the worksheet supporting Table 8-3 are similar to Staff's proposed calculation, but result in MWh values rather than a ratio. The calculation the portion of eligible load MidAmerican provided to the IPA is as follows:

$$\text{MWh} = \sum_{Hr} [\text{Forecasted energy consumption} - \text{Forecasted non-IPA energy supply}]$$

² Wind RPS requirement is 75% of the annual RPS requirement. See 20 ILCS 3855/1-75(c)(1).

³ PV RPS requirement is 6% of the annual RPS requirement. See 20 ILCS 3855/1-75(c)(1).

⁴ Distributed Generation RPS requirement is 1% of the annual RPS requirement. See 20 ILCS 3855/1-75(c)(1).

Additionally, MidAmerican proposed the following changes to the budget funds to page 128 of the Draft 2016 Procurement Plan:

Table 8-6: Available Renewable Resources Budget Funds, MidAmerican

Delivery Year	Delivery Year RPS Budget (\$)	Available RPS Funds (\$)
2016-2017	2,477,311 <u>416,820</u>	2,477,311 <u>416,820</u>
2017-2018	2,486,717 <u>454,380</u>	2,486,717 <u>454,380</u>
2018-2019	2,496,201 <u>498,235</u>	2,496,201 <u>498,235</u>
2019-2020	2,507,235 <u>534,233</u>	2,507,235 <u>534,233</u>
2020-2021	2,518,768 <u>507,116</u>	2,518,768 <u>507,116</u>

As demonstrated above, MidAmerican’s renewable budget based on its “total” load would be significantly higher than that based on MidAmerican’s requested incremental load. MidAmerican has requested that the “portion” be computed on an annual basis consistent with the 2016 Procurement Plan for MidAmerican’s incremental jurisdictional load.

Based on the information MidAmerican previously provided the IPA on September 14, 2015, the IPA has sufficient information to amend the plan according to the direction of the Proposed Order. Therefore, the Commission should reject Staff’s request for clarification and direct the IPA to amend the plan in accordance with the information already provided by MidAmerican.

II. CONCLUSION

WHEREFORE, MidAmerican Energy Company respectfully requests the Illinois Commerce Commission adopt the Proposed Order as it relates to the amount of Renewable Energy Credits procured for MidAmerican. MidAmerican also respectfully requests that the Illinois Commerce Commission reject Staff's exceptions along with the Illinois Power Agency exceptions related to MidAmerican's renewable resource target.

Dated: December 1, 2015.

Respectfully submitted,

MIDAMERICAN ENERGY COMPANY

By /s/ Jennifer S. Moore
Jennifer S. Moore
Senior Attorney
MidAmerican Energy Company
106 East Second Street
P. O. Box 4350
Davenport, Iowa 52808
Telephone: 563/333-8006
Facsimile: 563/333-8021
jsmoore@midamerican.com